



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

JERVA EDWARD JAMES,  
Plaintiff,

vs.

MICHAEL GARY NETTLES,  
JOHN BENJIMEN ALPIN, and  
ROBERT M. STEVENSON, III,  
Defendants.

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CIVIL ACTION NO. 3:08-2413-HFF-JRM

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ORDER

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This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the complaint be dismissed without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 11, 2008, and the Clerk of Court entered Plaintiff's objections to the Report on August 19, 2008.

The Court has carefully considered Plaintiff's objections, but agrees with the Magistrate Judge that to bring this action under 42 U.S.C. § 1983, Plaintiff must first successfully challenge his sentence. *See Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (“[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983.”). Because Plaintiff has not yet challenged his sentence, his objections are without merit.

Plaintiff asserts that he has filed a petition for habeas corpus. (Pl.'s Objections 1.) If this petition is successful, then the Court could entertain his § 1983 lawsuit. *See Heck*, 512 U.S. at 486-487 (noting that to recover damages for allegedly unconstitutional imprisonment, §1983 plaintiff must prove that sentence has been successfully challenged).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the complaint be **DISMISSED** *without prejudice* and without issuance and service of process.

**IT IS SO ORDERED.**

Signed this 29th day of September, 2008, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.